

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 1.D
Mtg. Date October 3, 2017
Dept. City Attorney

Item Title: Resolution of the City Council of the City of Lemon Grove, California Approving an Appeal of a Zoning Clearance Denial to Apply for a Conditional Use Permit to Establish a Medical Marijuana Dispensary at 6915 North Avenue (ZC1-700-0016).

Staff Contact: James P. Lough, City Attorney

Recommendation:

That the City Council consider and adopt the following:

1. Adopt the attached Resolution approving the appeal from a denial of a Zoning Clearance for Application Number ZC1-700-0016.

Item Summary:

The attached resolution ratifies the approval of an appeal of a Zoning Clearance that overturns a Director Determination. The City Council has no discretion to reconsider the decision made at the September 19, 2017 Public Hearing. For this item, Council discretion is limited to a determination about whether the findings in the Resolution accurately reflect Council determinations made after the Public Hearing.

Environmental Review:

☒ Not subject to review

☐ Negative Declaration

☐ Categorical Exemption, Section]]

☐ Mitigated Negative Declaration

Public Information:

☐ None

☐ Newsletter article

☐ Notice to property owners within 500 ft.

☐ Notice published in local newspaper

☐ Neighborhood meeting

Attachments:

A. Staff Report

B. Resolution Approving the Findings and Ratifying Approval of the Appeal. (ZC1-700-0016.)

ATTACHMENT A

LEMON GROVE CITY COUNCIL

Mtg. Date October 3, 2017

Item Title: **Resolution of the City Council of the City of Lemon Grove, California Approving an Appeal of a Zoning Clearance Denial to Apply for a Conditional Use Permit to Establish a Medical Marijuana Dispensary at 6915 North Avenue (ZC1-700-0016).**

Staff Contact: James P. Lough, City Attorney

BACKGROUND:

On June 13, 2017, the Development Services Director (Director) denied Zoning Clearance Application No. ZC1-700-0016, a request to establish a medical marijuana dispensary (MMD) on a 0.53-acre shopping center property located at 6915 North Avenue. The application was denied because the proposed MMD would be at a property located within 1,000 feet of three State-licensed family daycares. The City of Lemon Grove obtained a confidential list of family daycare homes from the Department of Social Services (DSS), subject to the provision that the list be kept confidential.

The appellant, Mr. Christopher O. Williams, subsequently filed an appeal and request for public hearing disputing the 1,000-foot limit interpretation. The public hearing was continued from August 15, 2017 to September 19, 2017. On September 19, 2017, the City Council conducted the public hearing. The Council voted 4-0, Council member Matthew Mendoza absent, to approve the appeal. The City Council determination was made based on the Staff Report, public comment and written information received at the public hearing.

DISCUSSION:

The attached Resolution ratifies the approval of the appeal at the September 19, 2017 Council meeting. The Resolution is intended to reflect the Findings made by the Council in approving the Appeal. In addition, the Findings also reflect conclusions of the Council regarding issues raised at the Public Hearing that were not persuasive because they did not follow the language found in Measure "V".

The Findings reflect that, with certain exceptions, there must be a 1,000-foot separation between Regulated Uses and Protected Uses such as state licensed daycare centers. The distance measurement is in a straight line regardless of the location of buildings, fences or other impediments preventing direct line travel except for two types of barriers under Lemon Grove Municipal Code ("LGMC") Section 17.32.090(B). This subsection states as follows:

B. Distance Requirements. An application may be submitted provided the proposed facility meets the required distance measurements. For purposes of measurements, all dispensaries are considered regulated uses and public parks as defined at Section 12.20.030 of Lemon Grove Municipal Code, playgrounds as defined at Section 18.28.020, subdivision (v), of the Lemon

Grove Municipal Code, licensed day care facilities as defined at Section 17.08.030 of Lemon Grove Municipal Code, schools as defined at California Health and Safety Code Section 11362.768, subdivision (h), and alcohol and substance abuse treatment centers are considered protected uses. Measurement is made between the closest property lines of the premises in which the regulated uses and protected uses are located. A regulated use must not be:

1. Within one thousand feet of any other regulated use which is located either inside or outside the jurisdiction of the city,
2. Within one thousand feet from any protected use which is located either inside or outside the jurisdiction of the city.

The measurement of distance between uses will take into account natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access.

The two exceptions to the straight-line measurement method are for “**natural topographical barriers**” and “**constructed barriers** such as freeways or flood control channels that would impede direct physical access between the uses.” Unless an impediment fits into one of these two categories (natural topographical or constructed), the impediment cannot be a justification to deviate from the straight-line 1,000-foot distance requirement between a regulated use and a protected use under LGMC Section 17.32.090(B).

The Findings reflect a determination that testimony regarding vegetation on a slope next to the protected use do not constitute a natural topographical barrier. Vegetation is not a topographic feature of the land. While it is affixed to the land, it is subject to change over time.

Testimony was also received about a long fence that had barbed wire that prevented access to the protected use. The Findings reflect that a barbed wire fence does not constitute a constructed barrier such as a freeway or flood control channel. A fence does not fall into the same class of impediments as the examples contained in Section 17.32.090(B). A fence is subject to removal at any time and does not have the permanency or is in the same “constructed” class of impediments as a freeway or flood control channel.

The Council’s determination was made based on a combination of factors unique to the property at 6915 North Avenue and its relative location compared to the protected uses found at 7106 Westview Place. First, Council discussion centered around the freeway onramp next to 6915 North Avenue. This property is at the beginning of the freeway and the end of Broadway. At this point, Federal Boulevard also feeds into North Avenue and Broadway. In addition, the maps presented at the hearing do not show a marked crosswalk. To find a marked crosswalk, one would have to walk east on Broadway to be able to cross at a marked crosswalk. The Findings reflect that the City Council considered this location as an impediment resembling a constructed barrier. However, by itself, it would not be considered an impenetrable constructed barrier such as a freeway or flood control channel.

ATTACHMENT A

Second, the City Council found that the slope at the west end of the protected use property was a significant impediment. Testimony and topographic information presented at the public hearing contained evidence that the slope was between twenty and twenty-five feet high, with a steep angle. Discussion among the Council indicated that this barrier, by itself, did not constitute a natural topographic barrier to place the protected use outside of the 1,000-foot zone. However, when the City Council considered the combination of the steep angled slope (natural topological barrier) and the freeway onramp/Broadway (constructed barrier) location bordering on the regulated use, the two factors demonstrated that the distance measurement should consider the two barriers.

The hearing record demonstrated that the straight-line distance between the regulated use and the protected use was 853 feet. With the combination of the two barriers, the City Council found that the distance between the uses would exceed the 1,000-foot threshold. The Findings discuss how the measurement is modified by the barriers (natural topographic or constructed). The language of LGMC Section 17.32.090(B) states, in part, as follows:

In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access.

While neither barrier, by itself, constitutes an impediment intended to deviate from the straight-line measurement method, the combination of the two barriers would add more than 147 feet to the calculation. The constructed barrier would likely cause a pedestrian to walk east on Broadway to the nearest marked cross walk. The slope west of the regulated use would require a detour to the end of the *cul du sac* on Westview Place. These unusual circumstances require the consideration of two barriers to exceed the 1,000-foot measurement.

With this decision, the Applicant is free to proceed with finalizing all other elements required to receive his Zoning Clearance. Once the Zoning Clearance is received, the Applicant may proceed with an application for a Conditional Use Permit.

Fiscal Impact:

|None|

RESOLUTION NO. 2017-____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE APPROVING AN APPEAL OF A ZONING CLEARANCE DENIAL ALLOWING THE APPLICANT TO APPLY FOR A CONDITIONAL USE PERMIT SEEKING TO ESTABLISH A MEDICAL MARIJUANA DISPENSARY AT 6915 NORTH AVENUE (ZC1-700-0016), LEMON GROVE, CALIFORNIA

WHEREAS, on November 8, 2016, voters in the City of Lemon Grove passed Measure V, an initiative removing the City's prohibition of medical marijuana dispensaries and establishing performance standards and a permit process by which medical marijuana dispensaries may be established; and

WHEREAS, Measure V, includes the adoption of Lemon Grove Municipal Code Chapter 17.32 (Medical Marijuana Regulations) which prohibits the establishment of medical marijuana dispensaries within 1,000 feet of certain protected uses, as specifically codified in Lemon Grove Municipal Code Section 17.32.090(B), including licensed daycare facilities; and

WHEREAS, Measure V states "measurement is made between the closest property lines of the premises in which the regulated uses and protected uses are located." Measure V further states "the measurement of distance between uses will consider natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses. In such cases, the separation distance shall be measured as the most direct route around the barrier in a manner that establishes direct access." Measure V only references freeways and flood control channels as examples of constructed barriers. A freeway is defined as "an express highway, especially one with controlled access." Flood control is defined as "the act or technique of controlling river flow with dams, dikes, artificial channels, etc., to minimize the occurrence of floods." Examples of constructed barriers only include major linear obstructions traversing for miles where pedestrian access is prohibited or severely limited; and

WHEREAS, City staff requested and obtained a confidential list of licensed family daycare homes from the California Department of Social Services; and

WHEREAS, to obtain the confidential list of family daycare homes, City of Lemon Grove staff agreed to keep the information confidential as required by the State of California Department of Social Services; and

WHEREAS, on March 13, 2017, the City received a confidential list from the California Department of Social Services noting that such facilities are within 1,000 feet of 6915 North Avenue when measured by direct line between the regulated and protected properties; and

WHEREAS, on June 1, 2017, after being informed verbally by City staff that the subject property was within 1,000 feet of a licensed daycare facility, and that submittal of a zoning clearance application would result in a denial, the appellant (Christopher O. Williams) filed ZC1-700-0016, an application to apply for a conditional use permit to establish a MMD at 6915 North Avenue, Lemon Grove, CA; and

ATTACHMENT B

WHEREAS, on June 13, 2017, the Development Services Director denied ZC1-700-0016 because the proposed project site is located within 1,000 feet of a State-licensed daycare facility; and

WHEREAS, on June 21, 2017, Pick Axe Holdings, LLC, filed an administrative appeal of the Director's decision (AA1-700-0004). The Appeal was treated as an appeal by Christopher O. Williams, in that Pick Axe Holdings was not the applicant and could not file the appeal. The Appeal stated that the denial letter does not state the licensed daycare home and therefore has not put the applicant on notice for the reason for denial there are no schools or licensed day care facilities within 1,000 feet of the subject property; and

WHEREAS, Government Code Section 6254.5(e) of the California Public Records Act specifically exempts government agencies from the requirement to disclose confidential information that was shared between agencies under an agreement to maintain the confidentiality of said information; and

WHEREAS, City staff disclosed in writing the address of the three existing daycare facilities, located at 7106 Westview Place, Lemon Grove, on July 25, 2017 as evidenced by the letter attached to the Agenda Item Summary as Attachment "I"; and

WHEREAS, on August 15, 2017, the City Council held a duly noticed public hearing to consider AA1-700-0004, an appeal of the Development Services Director's determination to deny ZC1-700-0016 and, at the request of the applicant, the City Council continued the public hearing to September 19, 2017; and

WHEREAS, on September 19, 2017, the City Council held a continued public hearing to consider AA1-700-0004, an appeal of the Development Services Director's determination to deny ZC1-700-0016; and

WHEREAS, on September 19, 2017, the City Council received oral and written testimony from the Applicant, the Applicant's representatives, Lemon Grove staff and members of the public; and

WHEREAS, Mayor Pro Tem Jennifer Mendoza disclosed an *ex parte* (pre-hearing) contact with the Applicant's legal counsel, Gina Austin, to make a request to add clarifying information to an Exhibit supplied by the Applicant; and

WHEREAS, the City Council determined that no licensed daycare centers were within 1,000 feet of 6915 North Avenue, as measured by the method established under Lemon Grove Municipal Code ("LGMC") Section 17.32.090(B), when the City Council considered the unique location of the proposed regulated use and two cumulative impediments located between the regulated use and the protected use; and

WHEREAS, by straight- line measurement, as determined under LGMC Section 17.32.090(B), the three licensed daycare centers are 853 feet from the Applicant's parcel containing its business location; and

WHEREAS, the City Council further finds that testimony about buildings and other impediments between the protected uses and the regulated use are not relevant under LGMC Section 17.32.090(B) in that they are not "natural topographic barriers" or "constructed barriers" and are not considered when applying a straight-line measurement (without barriers) under the applicable measurement section; and

Attachment B

WHEREAS, the City Council finds that the Applicant's property location borders a freeway onramp, which, due to its unique location partially between the Applicant's property location and the protected uses, can be considered an artificial constructed barrier under LGMC Section 17.32.090(B), requiring a person to alter their path between the two locations; and

WHEREAS, the protected use, located in a *cul du sac* at the end of Westview Place, was bordered by a steep slope with an approximate 25-foot elevation change. Said slope is situated between the protected use and the regulated use and is a natural topographical barrier requiring any person traversing the space between the two uses to alter their path of travel; and

WHEREAS, the combination of the constructed (conjunction of Broadway Avenue at the 94 Freeway westbound onramp) and natural topographical (slope at the western property line of the protected use) barrier would require a person to traverse more than 1,000 feet when traveling between the regulated use and the protected use as measured by the most direct route around each barrier in a manner that establishes direct access; and

WHEREAS, the City Council further finds that testimony that discussed the vegetation on the slope of the western side of the protected use does not fall within the definition of a "natural topographical barrier" in that it is not part of the natural part of the land mass and is not a topographic or constructed barrier used in altering the straight-line method of measurement under LGMC Section 17.32.090(B); and

WHEREAS, the City Council further finds that testimony which discussed the barbed wire fence is not relevant in that it does not qualify as a constructed barrier, such as freeways or flood control channels to deviate from the straight-line method expressed in LGMC Section 17.32.090(B); and

WHEREAS, the appeal of this determination is not a project and is not subject to the environmental review requirements of the California Environmental Quality Act (CEQA). The underlying request for a Conditional Use Permit is a discretionary project that will require environmental review.

NOW, THEREFORE, INCORPORATING THE ABOVE STATEMENTS HEREIN, BE IT RESOLVED that the City Council of the City of Lemon Grove hereby:

1. Approve Christopher O. Williams' Administrative Appeal No. AA1-700-0004 based on the above-findings and the record of written materials and oral testimony of the Public Hearing conducted on August 15, 2017 and continued to and completed on September 19, 2017.
2. Grants the right to proceed to complete Applicant's Zoning Clearance which would allow allowing the Applicant to request to apply for a conditional use permit to operate a medical marijuana dispensary, at 6915 North Avenue, Lemon Grove, CA., pursuant to the applicable ordinances and building codes.
3. The City Council directs City Staff to process the application of Christopher O. Williams needed to complete any outstanding items on the checklist to allow issuance of a Zoning Clearance and, when the Zoning Clearance is granted, to process a Conditional Use Permit Application to conduct the business of a Medical Marijuana Dispensary under the applicable laws, rules and regulations of the City of Lemon Grove.

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ATTACHMENT B

PASSED AND ADOPTED by the City Council of the City of Lemon Grove, California on the 3rd day of October 2017 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Racquel Vasquez, Mayor

ATTEST:

Susan Garcia, City Clerk

APPROVED AS TO FORM:

James P. Lough, City Attorney